IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32 (2) (b)

Description of Case

Crl. Misc. Appl. No. 437/2005

S.I. Harish Chandra & other
Vs.
State and another

Date of Decision:-15.7.2005

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Dated:- 15.7.2005 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Appl. No. 437 of 2005

1. Sub Inspector Harish Chandra Singh
   R/o Pushpa Vihar
   P.S. Kashipur
   District U.S. Nagar
2. Moti Jain S/o Sri Ram Chandra Jain
   R/o Mohalla Lohariyan
   P.S. Kashipur
   District U.S. Nagar
3. Som Pal R/o Som Electrical
   Awas Vikas, P.S. Kashipur
   District U.S. Nagar .....Applicants

Versus

1. State of Uttaranchal
2. Rehma @ Guddu
   S/o Sri Chote Ali
   R/O Mohalla Maheshpura
   P.S. Kashipur
   District U.S. Nagar .....Respondents

Date:- 15th July, 2005

Hon'ble J.C.S. Rawat, J.

Heard Sri Pushpa Joshi learned counsel for the applicants and learned A.G.A. for the State.

The petition under section 482 Cr.P.C. has been filed for quashing the proceedings of case crime No.1884/2004 under section 323, 324, 326, 427, 504, 506 I.P.C. pending before the Judicial Magistrate, Kashipur and for quashing the order dated 27.5.2005 passed by the Judicial Magistrate, Kashipur.

The factual position in a nutshell is that on 28.9.2004 the respondent No.2-Rehman @ Guddu has filed the application under section 156(3) Cr.P.C. before the Judicial Magistrate, Kashipur. Thereafter, the police investigated the matter and the final report was submitted before the learned Magistrate. After giving the notice to the complainant the learned Magistrate did

not accept the final report and summoned the applicants-accused.

The learned counsel for the applicants contended that there was no sufficient evidence against the applicants to summon the applicants and as such the summoning order is bad in law. It was further contended on behalf of the applicants that the learned Magistrate has erred in holding that there is prima-facie case against the applicants without any reasoned order. The learned A.G.A. refuted the contentions. It is well settled position of law that when the final report is submitted before the Magistrate, the Magistrate can either to summon the accused on the basis of the investigation report or to accept the final report. Before taking cognizance on the basis of the final report, the Magistrate must have satisfied himself that there is sufficient evidence against the accused. However, the learned Magistrate has only observed that the court has perused the papers and held that it is just and proper to summon the accused-applicants. The learned Magistrate has not discussed the evidence, which is available against the applicants-accused. It is not required for the learned Magistrate that she will discuss the evidence as if the court is concluding a trial and after evaluation of the evidence, recording the conviction and acquittal. The learned Magistrate should have discussed in the impugned order that the evidence on the basis of which the court has come to the conclusion that there is sufficient ground to proceed against the applicants. The learned Magistrate has another option, if she feels that if she requires further evidence it can be taken up as a compliant case, the court can proceed under sections 200 & 202 Cr.P.C. In the instant case, the learned Magistrate has erred in not giving any reasons for

coming to the conclusion that there is prima-facie case against the applicants-accused.

In view of the above, the order dated 27.5.2005 passed by the learned Judicial Magistrate, kashipur in case crime No.1884/2004 is set-aside. The learned Magistrate is directed to decide the objections (protest petition) of the complainant afresh in the light of the observations made above.

The petition is disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 15.07.2005
LSR